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EXAMINER
HARRY, ANDREW T

ART UNIT	PAPER NUMBER
2684	5

DATE MAILED: 03/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/668,502	Applicant(s) ALMASSY, NIKOLAUS P.W.	
	Examiner Andrew T Harry	Art Unit 2684	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-65* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *10,11,13,41,52,55,61 and 63-65* is/are allowed.

6)☒ Claim(s) *1-9,12,15,17-30,32,34-40,42-44,46,48-51,54,56-58,60 and 62* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *22 September 2000* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *2 and 4* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-8, 12, 15, 17-22, 24-30, 32, 34-40, 42-44, 46, 48-51, 54, 56-58, 60, and 62 are rejected under 35 U.S.C. 102(e) as being anticipated by ***Bork et al.*** **U.S. Patent 6,246,376** ("*Bork*").

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

As pertaining to **claims 1, 15, 25, 37, 42, 46, 48, 50, 58 and 60,** *Bork* teaches in a wireless communications system and mobile station, a method and apparatus for a mobile station to determine proximity to a telephone or second mobile phone, the method and apparatus comprising (see *Bork*, abstract):

a first mobile station determining its position by having an input to receive information indicative of its location (see *Bork*, col. 4 lines 54-60);

the first mobile station receiving the position of a telephone or second mobile station after requesting the location information (see *Bork*, col. 4 line 60-col. 5 line 2); and

the first mobile station calculating the distance to the telephone or second mobile station after receiving the position information from the second mobile station or telephone (see *Bork*, col. 5 lines 2-8).

As pertaining to **claims 2, 26 and 43,** *Bork's* method also comprises:

the first mobile station and second mobile station or telephone determining its alignment in a coordinate system (see *Bork*, col. 4 lines 54-60); and

calculating the direction to the telephone and first or second mobile station (see *Bork*, col. 5 lines 2-8).

As pertaining to **claims 3, 36, and 38**, *Bork* describes that the communications between the first station takes place with a "trusted" second station, thus indicating that the system had a method for determining a trust level and that receiving the position of the telephone includes receiving the position in response to the level of trust determined by the telephone (see *Bork*, col. 2 lines 22-25, and col. 3 lines 32-39).

As pertaining to **claims 4, 32, 39, and 56**, *Bork's* method also comprises:

prior to automatically sending its position, generating a request to authorize the sending of the telephone position (see *Bork*, col. 4 line 60-col. 5 line 2); and

wherein receiving the position of the telephone includes receiving the position in response to the request being authorized (see *Bork*, col. 4 line 60-col. 5 line 2).

As pertaining to **claims 5, 49 and 51**, in *Bork's* method the first mobile station and second mobile station or telephone is connected to a global positioning satellite (GPS) receiver (see *Bork*, col. 6 lines 54-60); and

determining the position of the first mobile and second mobile station or telephone station includes the first mobile station receiving data from the GPS receiver (see *Bork*, col. 6 lines 54-58).

As pertaining to **claims 6, 27, 40, and 54**, in *Bork's* method the telephone can be a second mobile station, connected to a GPS receiver (see *Bork*, col. 6 lines 54-60), and the method further comprising:

the second mobile station receiving data from the connected GPS receiver (see *Bork*, col. 4 line 60-col. 5 line 2); and

the second mobile station sending its position in response to the data received from the connected GPS receiver (see *Bork*, col. 4 line 60-col. 5 line 2).

As pertaining to **claims 7, 28, and 44**, *Bork's* method further comprises:

the first or second mobile station sending a request for the position of the first or second mobile station; and

wherein the first or second mobile station sending of its position includes the first or second mobile station sending its position in response to the first or second mobile station request (see *Bork*, col. 4 line 60-col. 5 line 2).

As pertaining to **claim 8**, in *Bork's* method when the second mobile station send off its position it includes the second mobile station automatically sending its position in response to the request (see *Bork*, col. 4 line 60-col. 5 line 2).

As pertaining to **claim 12**, in *Bork's* method the first mobile station sends its request for the position of the second mobile station to the second mobile station (see *Bork*, col. 4 line 60-col. 5 line 2); and

the second mobile station sends the second mobile station position to the first mobile station in response to the request (see *Bork*, col. 4 line 60-col. 5 line 2).

As pertaining to **claims 17 and 35**, in *Bork's* disclosure the first and second mobile station/telephones can be one and the same (see *Bork*, col. 4 lines 54-col. 5 line 2).

As pertaining to **claim 18,** *Bork* describes that the communications between the first station takes place with a "trusted" second station, thus indicating that the system had a method for determining a trust level and that receiving the position of the telephone includes receiving the position in response to the level of trust determined by the telephone (see *Bork*, col. 2 lines 22-25, and col. 3 lines 32-39).

As pertaining to **claims 19 and 29-30**, *Bork's* method further discloses that the telephone can be a fixed location device such as a retail shop, or possibly a pay phone (see *Bork*, col. 5 lines 49-67), and the method further comprises:

creating position record of the telephone with the service provider (see *Bork*, col. 5 lines 49-67, the service provider could be the service provider used by the user of the first handset device);

wherein the first mobile station receiving of the position of the phone includes the first mobile station receiving the position from the service provider (see *Bork*, col. 5 lines 49-67).

As pertaining to **claim 20**, *Bork's* method further comprises:

the first mobile station requesting the position of the telephone, from the telephone; and

the telephone requesting the service provider to send its position to the first mobile station (see *Bork*, col. 5 lines 49-67).

As pertaining to **claims 21 and 62**, *Bork's* method also comprises:

the service provider creating a dedicated number to request position information; and

wherein the first mobile receiving of the position of the telephone includes the first mobile station dialing the dedicated number to receive the telephone position (see *Bork*, col. 5 lines 54-55, the device can be paged over a cellular link, thus needing a number).

As pertaining to **claim 22**, *Bork's* method further discloses that the telephone can be a fixed location device such as a retail shop, or possibly a pay phone (see *Bork*, col. 5 lines 49-67), and the first mobile phone has memory **306** (see *Bork*, col. 5 lines 2-8, the device needs memory to somehow store the downloaded location information) and the method further comprises:

creating a position record of the telephone in the first mobile station memory (see *Bork*, col. 5 lines 2-8); and

wherein the first mobile station receiving the position of the phone includes the first mobile station accessing its memory to receive the position (see *Bork*, col. 5 lines 49-67).

As pertaining to **claims 24 and 34,** *Bork's* method also comprises:

Following the receiving the telephone position, communicating the position with presentation selected from the group including audio signals and graphic displays (see *Bork*, col. 5 lines 7-12).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 6-7 (again), 9, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by ***Hashimoto*** **UK Patent Number 2,322,248** ("*Hashimoto*").

As pertaining to **claims 1 and 2**, *Hashimoto* teaches in a wireless communication system, a method for a mobile system to determine proximity to a telephone (see *Hashimoto*, abstract), the method comprising:

a first mobile station determining its position (see *Hashimoto*, page 8 line 21 – page 9 line 20);

the first mobile station receiving the position of a telephone (see *Hashimoto*, page 10 line 15 – page 11 line 10); and

the first mobile station calculating the distance and alignment in a coordinate system to the telephone (see *Hashimoto*, page 10 line 15 – page 11 line 10).

As pertaining to **claim 3**, *Hashimoto's* method also comprises:

the telephone determining a trust level that it has in the first mobile station; and

wherein receiving the position of the telephone includes receiving the position in response to the level of trust determined by the telephone (see *Hashimoto*, page 13 lines 4-23, in *Hashimoto* the central station assures that all the mobile units in communication within the system are identified and verified by a user ID).

As pertaining to **claim 5**, in *Hashimoto's* disclosure the first mobile station is connected to a GPS receiver; and

determining the position of the first mobile station includes the first mobile station receiving data from the GPS receiver (see *Hashimoto*, page 8 line 7-page 9 line 20).

As pertaining to **claim 6**, in *Hashimoto's* disclosure the telephone can be a second mobile station (similar to the first) connected to a GPS receiver (see *Hashimoto*, page 8 line 7-page 9 line 20), and the method further comprises:

the second mobile station receiving data from the connected GPS receiver (see *Hashimoto*, page 8 line 7-page 9 line 20); and

the second mobile station sending its position in response to the data received from the connected GPS receiver (see *Hashimoto*, page 25 line 12-page 28 line 23).

As pertaining to **claim 7**, *Hashimoto's* method also comprises:

the first mobile station sending a request for the position of the second mobile station; and

wherein the second mobile station sending of its position includes the second mobile station sending its position in response to the first mobile station position request (see *Hashimoto*, page 25 line 12-page 28 line 23).

As pertaining to **claim 9**, *Hashimoto's* method further comprises:

the second mobile station sending its position to the wireless communication system;

the wireless communications system collecting and storing the position of the second mobile station; and

wherein the first mobile station sending a request for the position of the second mobile station includes sending the position request to the wireless communications system; and

the method further comprising:

the wireless communications system sending the second mobile station position to the first mobile station, in response to the position request (see *Hashimoto*, page 25 line 12-page 28 line 23).

As pertaining to **claim 23**, *Hashimoto's* method also includes:

the first mobile station receiving a plurality of telephone position over a period of time; and

the first mobile station tracking the change in distance and direction to the telephone over the period of time (see *Hashimoto*, page 25 line 12-page 28 line 23).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 14, 16, 31, 33, 45, 47, 53 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Bork*.

Claims 14, 16, 31, 33, 45, 47, 53 and 59 all claim that the instant system is capable of transmitting location information back and forth using audio information or SMS messages that is exchanged between the two devices. *Bork* is silent on this specific method for exchange of location information, however *Bork* does describe that his method may be used in a cellular system (see *Bork*, col. 4 lines 28-53) and that the users are able to speak to one another and also SMS one another as is now readily the case in most cellular phone systems. It would have been obvious to one of ordinary skill in the art at the time of the invention to allow two phone users to exchange a phone call or SMS message with each using the GPS on their phone to determine their locations and give each other coordinates. This would have allowed users to enter the coordinates into their GPS modules and then determine the location of the other user.

Allowable Subject Matter

Claims 10, 11, 13, 41, 52, 55, 61, and 63-65 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 10, 11, 13, 41, 52, 55, 61, and 63-65 claim that the system and method has the ability to maintain a record of trust relationships regarding the communications system, and using that to determine the level of trust between the various communicating entities over the system. This is a feature that is not implemented in either *Hashimoto* or *Bork* and would not be obvious modifications over these designs. Therefore the instant inventions ability to do this allows it to be allowable over the prior art made of record.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A. Bickley et al. U.S. Patent 5,519,403 teaches a global positioning system communications multi-interface.

B. Murphy U.S. Patent 5,917,434 teaches an integrated taximeter/GPS position tracking system.

C. Murphy U.S. Patent 5,6,087,965 teaches a vehicle mileage meter and a GPS position tracking system.

D. Sakuma U.S. Patent 6,317,605 teaches a mobile communications system.

E. Carlsson U.S. Patent 6,466,788 teaches methods and apparatus for transferring position data between terminals in wireless communications systems.

F. Yogo U.S. Patent 5,548,822 teaches a mobile station monitoring system.

G. Obradovich et al. U.S. Patent 6,515,595 teaches a personal communication and positioning system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T Harry whose telephone number is 703-305-4749. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Hunter can be reached on 703-308-6732. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

ATH
March 18, 2003

THANH CONG LE
PRIMARY EXAMINER 3/26/03